

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 28 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NISHAR ANWAR @ JANGLIA BADAM

Versus

DISTRICT MAGISTRATE

Appearance:

MR JM BUDDHBHATTI for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/04/2000

ORAL JUDGEMENT

1. The District Magistrate, Panchmahals, at Godhra, passed an order in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining Nisar Anwar alias Jangaliyo Badam of Godhra under the provisions of the

said Act.

2. The detenu, while under detention, made an application to this Court for judicial scrutiny of the order of detention. The application is treated as a writ petition under Article 226 of the Constitution. Since the petitioner was not represented by an advocate, this Court directed the office to make necessary arrangements for providing legal aid to the detenu and Mr. J.M. Buddhbhatti appears for the detenu as a legal aid advocate.

3. Learned Assistant Government Pleader has provided a set of documents served on the detenu along with the grounds of detention. On scrutiny thereof, it appears that the detaining authority took into consideration six offences registered against the detenu under various provisions of Indian Penal Code, which can be enumerated as under :-

SNo.	Name of Police Station	FIR No.	Section of offence.
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01	Godhra Town	310/97 461 and 379	28.9.97 of I.P.C.
02	-do-	192/98 380 of I.P.C.	24.5.98
03	-do-	215/98 379 of I.P.C.	9.6.98
04	-do-	252/99 379 of I.P.C.	20.7.99
05	-do-	194/99 379 of I.P.C.	10.6.99
06	-do-	285/99 547 and 380 of	18.8.99 I.P.C.

The detaining authority also took into consideration statements of two witnesses recorded by Police Inspector, LCB, Godhra and exercised powers under Section 9(2) of the PASA Act by not disclosing identity of these witnesses in public interest. The authority exercised these powers after recording a satisfaction about the correctness of the incidents and the fear expressed by

these witnesses qua the detenu. The detaining authority found that the petitioner-detenu is required to be immediately prevented from pursuing his illegal and anti-social activities and that resorting to ordinary law is not possible, as it may consume time. The authority, therefore, came to conclusion that detention under PASA Act is the only efficacious remedy available to the detaining authority to prevent the petitioner from pursuing his activities of a dangerous person as defined in Section 2(c) of the PASA Act.

4. Mr. Buddhbhatti, learned advocate appearing for the petitioner by way of legal aid, has raised number of contentions. He submitted that there is improper exercise of powers under Section 9(2) of the PASA Act by the detaining authority. In order to substantiate his arguments, he has drawn attention of this Court to the fact that the statements of two anonymous witnesses have been recorded on 13th and 15th August, 1999. These statements have been verified by Dy.S.P. on 20th August, 1999 and Sub-Divisional Magistrate on 31st August, 1999. The detaining authority, namely, District Magistrate, has not personally verified these statements and the order is passed on 31st August, 1999. Mr. Buddhbhatti, therefore, assails the exercise of powers under Section 9(2) of the PASA Act on two grounds. The first is that, there is no personal verification by the detaining authority and, therefore, the subjective satisfaction for the need for exercise of these powers cannot be said to be genuine. The second fold of argument is that the statements were verified by Sub-Divisional Magistrate on 31st August, 1999 and the order of detention came to be passed on that very day. Therefore, there was no time for the authority to undertake the exercise of verifying the correctness and genuineness of the incidents stated in the statements and the fear expressed by the witnesses qua the detenu and the need for exercise of these powers in public interest and, therefore also, the exercise of powers under Section 9(2) of the PASA Act is improper. Mr. Buddhbhatti submitted that non-disclosure of the identity of the witnesses has resulted into infringement of right of the detenu of making an effective representation.

4.1 Mr. Buddhbhatti submitted that, apart from the above defects, the order of detention suffers from other defect also, namely, that some of the papers supplied to the detenu are not legible, which has also affected the right of the detenu of making an effective representation.

4.2 The last argument of Mr. Buddhbhatti is that there is no material to indicate any disturbance to public order and, therefore, the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under the provisions of the PASA Act of detaining the petitioner in order to immediately prevent him from pursuing his activities which are detrimental to public order is vitiated. If there is no material to indicate disturbance of public order, the subjective satisfaction recorded by the authority cannot be said to be genuine. Mr. Buddhbhatti, therefore, submitted that the order of detention may be quashed and set aside and the petition may be allowed, setting the petitioner at liberty.

5. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. According to him, it is true that the detaining authority has himself not verified the statements of the witnesses, but the detaining authority has relied upon the verification made by Dy.S.P. as well as Sub-Divisional Magistrate, who are responsible officers and, therefore, the exercise of powers under Section 9(2) cannot be said to have been vitiated. Mr. Dave submitted that, apart from statements, there are six offences registered against the detenu, which indicate that the activity of the detenu is detrimental to public order and, for that purpose also, the detention order cannot be quashed. He submitted that the petition may, therefore, be dismissed.

6. Having regard to rival side contentions, it may be noted that, so far as the two statements of anonymous witnesses are concerned, the detaining authority has exercised powers under Section 9(2) of the PASA Act and has not disclosed the identity of those witnesses. For exercise of these powers, the detaining authority has to verify the correctness and genuineness of the statements and the fear expressed by the witnesses qua the detenu. The authority is required to consider whether these powers are required to be exercised in public interest. The authority has to weigh the right of the detenu of making an effective representation envisaged under Article 22(5) of the Constitution on one hand and the public interest on the other and then strike a balance between the two. This would call for consideration of various aspects like character of the detenu, antecedents of the detenu, background, etc. After considering all these aspects, the detaining authority has to record its subjective satisfaction that the fear expressed is genuine and that the identity cannot be disclosed in public interest. In the instant case, no such exercise

is undertaken by the detaining authority. The detaining authority has accepted the verification done by the Dy.S.P. and the Sub-Divisional Magistrate. There appears nothing to indicate that these verifications were done by Dy.S.P. and Sub-Divisional Magistrate at the instance of or under the directions of the detaining authority. There appears not any contemporaneous material to indicate that the detaining authority had considered the aspects discussed above while exercising powers under Section 9(2) of the PASA Act. There is nothing to indicate any communication between the detaining authority and the verifying authorities, namely, Dy.S.P. and Sub-Divisional Magistrate, which could have enabled the detaining authority to record a subjective satisfaction for the need for exercise of powers under Section 9(2) of the PASA Act. The exercise of powers, therefore, cannot be considered as genuine or proper. In this regard, decisions in the case of Bai Amina, w/o Ibrahim Abdul Rahim Allah v. State of Gujarat, 1981 (XXII) GLR 1186 and Kalidas Chandubhai Kahar v. State of Gujarat & Ors., 1993(2) GLR 1659 are relevant and would be squarely applicable to the facts of the present case.

7. Apart from improper exercise of powers under Section 9(2) of the PASA Act, another factor that requires consideration is non-supply of legible papers. It is demonstrated by Mr. Buddhbhatti that one paper relating to C.R. No.215 of 1998 and one paper relating to C.R. No.252 of 1999 of Godhra Town Police Station are not legible. This Court has examined these papers. It is found that the contention raised is correct. Learned Assistant Government Pleader, Mr. Dave, has also examined these papers and concedes to illegibility of these documents. Non-supply of legible documents in respect of these two offences can certainly be said to have affected the right of the detenu of making an effective representation and, therefore, the order based on these two offences cannot be sustained.

8. It may further be noted that the other offences registered against the detenu, in respect of which relevant documents are furnished to the detenu along with the grounds of detention, if perused, they indicate no disturbance to public order. In three of the offences, theft was noticed by the first informant only after some time and there is nothing to indicate any disturbance to public order. So far as one offence is concerned, the first informant claims to have noticed the petitioner running away with stolen property. There is nothing to indicate any disturbance to public order. Under the

circumstances, the subjective satisfaction recorded by the detaining authority on basis of these offences that the activity of the detenu is detrimental to public order cannot be accepted and sustained.

9. The upshot of the above discussion is that the order detention impugned in this petition suffers from number of defects as stated above and it cannot be sustained. The petition, therefore, deserves to be allowed.

10. In view of the above discussion, the petition is allowed. The impugned order of detention dated 31st August, 1999, passed against the detenu-Nisar Anvar alias Jangaliyo Badam is hereby quashed. The detenu is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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